

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

SNYDER'S-LANCE, INC. and
PRINCETON VANGUARD, LLC,

Plaintiffs,

v.

FRITO-LAY NORTH AMERICA,
INC.,

Defendant.

Case No. 3:17-CV-00652

DECLARATION OF MARK FINOCCHIO

I, Mark Finocchio, declare as follows:

1. I am over the age of 18 and competent to testify. I have personal knowledge of the matters stated in this declaration and would testify truthfully to them if called upon to do so.

2. In November 2010, I submitted a declaration in connection with proceedings before Trademark Trial and Appeal Board ("TTAB"). This declaration updates the information I provided at that time.

3. I am a President of Pinnacle Food Sales ("Pinnacle"), a large-scale food broker serving Florida, Georgia, and the Carolinas. I have worked as a broker in deli snack foods for 17 years. Pinnacle is a broker for two principal supermarkets in those areas: Publix and Harris Teeter. Pinnacle also serves a large number of secondary retail outlets such as Winn-Dixie Stores. The company is principally a broker of deli and dairy products, with a focus on deli snack foods.

4. Pinnacle has sold Snyder's-Lance Pretzel Crisps since 2004, when the product was first introduced onto the market. In my prior declaration, I stated that Pinnacle had brokered the sale of approximately \$12 million worth of Pretzel Crisps to its clients since 2005. Since 2012, Pinnacle has brokered the sale of an additional \$14 million worth of Pretzel Crisps. In the past year alone, Pinnacle brokered the sale of more than \$3 million worth of Pretzel Crisps.

5. As was the case in 2010, there is no question that the retailers I work with use PRETZEL CRISPS to refer exclusively to Snyder's-Lance's product. As also was the case in 2010, I am not aware of the term currently being used by any company to describe a snack food, and customers and retailers do not use the term "pretzel crisps" to describe a category of snack foods.

I declare under the penalty of perjury, that the foregoing is true and correct.

Executed on this 23rd day of October, 2018, in Coconut Creek, Florida.

A handwritten signature in dark ink, appearing to read "Mark Finocchio", is written over a horizontal line.

Mark Finocchio
President
Pinnacle Food Sales

CERTIFICATE OF SERVICE

I do certify that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record or interested parties via the CM/ECF system.

This 29th day of October, 2018.

ELLIS & WINTERS LLP

/s/ Jonathan D. Sasser

Jonathan D. Sasser
N.C. State Bar No. 10028
Alexander M. Pearce
N.C. State Bar No. 37208
Post Office Box 33550
Raleigh, North Carolina 27636
Telephone: (919) 865-7000
jon.sasser@elliswinters.com
alex.pearce@elliswinters.com

DEBEVOISE & PLIMPTON LLP

David H. Bernstein*
James J. Pastore*
Jared I. Kagan*
Michael C. McGregor*
919 Third Avenue
New York, New York 10022
Telephone: (212) 909-6696
dhbernstein@debevoise.com
jjpastore@debevoise.com
jikagan@debevoise.com
mcmcgregor@debevoise.com

*Counsel for Plaintiffs Snyder's-Lance, Inc.
and Princeton Vanguard, LLC*

*admitted *pro hac vice*